

FILED

JUN 2 - 2009

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA LOCAL 586; UNITED
BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA LOCAL 505,

: No. 05-75295

Petitioners,

: NLRB Nos.
: 20-CA-29636-1
v. : 20-CA-29918-1

NATIONAL LABOR RELATIONS BOARD,

Respondent.

NATIONAL LABOR RELATIONS BOARD,

Petitioner/Cross-Respondent,

UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA LOCAL 586; UNITED
BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA LOCAL 505,

: Nos. 05-76217
: 05-77116

Intervenors,

: NLRB Nos.
: 20-CA-29636-1
v. : 20-CA-29918-1

MACERICH MANAGEMENT COMPANY; MACERICH
PROPERTY MANAGEMENT COMPANY,

Respondents/Cross-Petitioners.

JUDGMENT

Before: Jane R. Roth, Sidney R. Thomas and
Consuelo M. Callahan, Circuit Judges.

THIS CAUSE came to be heard upon a petition filed by the United Brotherhood of Carpenters and Joiners of America, Locals 505 and 586, and a petition filed by Macerich Management Company and Macerich Property Management Company, to review an August 27, 2005 Order of the National Labor Relations Board in Board Case Nos. 20-CA-29636-1 and 20-CA-29918-1, and upon a cross-application filed by the National Labor Relations Board to enforce said Order. The Court heard argument of the parties and has considered the briefs and transcript of record filed in this cause. On August 25, 2008, the Court being fully advised in the premises, handed down its opinion granting the Unions' petition, granting in part the Board's petition and denying Macerich's petition. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that

A. The Respondent, Macerich Management Company, Sacramento, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Maintaining and enforcing a rule banning activities that identify by name the Arden Fair Mall owner, manager, or tenants.
 - (b) Maintaining and enforcing a rule that bans signage and written materials that "interfere with the commercial purpose" of the Arden Fair Mall.
 - (c) Maintaining and enforcing a rule that requires the presubmission of written materials for the purpose of enforcing the rules cited in paragraphs 1(a) and (b), above.
 - (d) Maintaining and enforcing a rule banning the carrying or wearing of signs at Arden Fair Mall.
 - (e) Maintaining and enforcing a rule excluding exterior areas, including mall sidewalks, from designated areas where expressive activities may occur at Arden Fair Mall.
 - (f) Maintaining and enforcing a rule prohibiting expressive activities during "peak traffic days" at Arden Fair Mall.
 - (g) Interfering with handbilling or picketing at Arden Fair Mall by maintaining an unlawful application policy.
 - (h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Rescind the rules indicated in paragraphs 1(a) through (f) above, and remove the language from the rules for noncommercial use of common areas, from the policies and guidelines for noncommercial use of common areas of Arden Fair Mall, and from any other document within the custody and control of Macerich Management Company wherever such rules may be contained.
- (b) Within 14 days after service by the Region, post at the facilities it maintains in connection with the operation of Arden Fair Mall in Sacramento, California, copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to the public are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 16, 1999.
- (c) Sign and return to the Regional Director sufficient copies of the notice for posting by the Union at its facility, if willing, at all places where notices to members and employees are customarily posted.
- (d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The Respondent, Macerich Property Management Company, Capitola, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Maintaining and enforcing a rule banning activities that identify by name the Capitola Mall owner, manager, or tenants.

- (b) Maintaining and enforcing a rule that bans signage and written materials that “interfere with the commercial purpose” of the Capitola Mall.
- (c) Maintaining and enforcing a rule that requires the presubmission of written materials for the purpose of enforcing the rules cited in paragraphs 1(a) and (b), above.
- (d) Maintaining and enforcing a rule banning the carrying or wearing of signs at Capitola Mall.
- (e) Maintaining and enforcing a rule excluding exterior areas, including mall sidewalks, from designated areas where expressive activities may occur at Capitola Mall.
- (f) Maintaining and enforcing a rule prohibiting expressive activities during “peak traffic days” at Capitola Mall.
- (g) Interfering with handbilling or picketing at Capitola Mall by maintaining an unlawful application policy, by threatening to cause the arrest of, and by causing the arrest of individuals affiliated with Carpenters Local 505, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.
- (h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Rescind the rules indicated in paragraphs 1(a) through (f) above, and remove the language from the rules for noncommercial use of common areas, from the policies and guidelines for noncommercial use of common areas of Capitola Mall, and from any other document within the custody and control of Macerich Property Management Company wherever such rules may be contained.
- (b) Within 14 days after service by the Region, post at the facilities it maintains in connection with the operation of Capitola Mall in Capitola, California, copies of the attached notice marked “Appendix B.” Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to the public are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the

pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 7, 2000.

- (c) Sign and return to the Regional Director sufficient copies of the notice for posting by the Union at its facility, if willing, at all places where notices to members and employees are customarily posted.
- (d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT maintain and enforce a rule banning activities that identify by name the Arden Fair Mall owner, manager, or tenants.

WE WILL NOT maintain and enforce a rule that bans signage and written materials that "interfere with the commercial purpose" of Arden Fair Mall.

WE WILL NOT maintain and enforce a rule that requires the presubmission of written materials for the purpose of enforcing the two rules cited above.

WE WILL NOT maintain and enforce a rule banning the carrying or wearing of signs at Arden Fair Mall.

WE WILL NOT maintain and enforce a rule excluding exterior areas, including mall sidewalks, from designated areas where expressive activities may occur at Arden Fair Mall.

WE WILL NOT maintain and enforce a rule prohibiting expressive activities during "peak traffic days" at Arden Fair Mall.

WE WILL NOT interfere with handbilling or picketing at Arden Fair Mall by maintaining an unlawful application policy.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind the rules indicated above, and remove the language from the rules for noncommercial use of common areas, from the policies and guidelines for noncommercial use of common areas of Arden Fair Mall, and from any other document within our custody and control wherever such rules may be contained.

MACERICH MANAGEMENT CO.

APPENDIX B

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT maintain and enforce a rule that bans activities that identify by name the Capitola Mall owner, manager, or tenants.

WE WILL NOT maintain and enforce a rule that bans signage and written materials that “interfere with the commercial purpose” of Capitola Mall.

WE WILL NOT maintain and enforce a rule that requires the pre-submission of written materials for the purpose of enforcing the two rules cited above.

WE WILL NOT maintain and enforce a rule banning the carrying or wearing of signs in Capitola Mall.

WE WILL NOT maintain and enforce a rule excluding exterior areas, including mall sidewalks, from designated areas where expressive activities may occur at Capitola Mall.

WE WILL NOT maintain and enforce a rule prohibiting expressive activities during “peak traffic days” at Capitola Mall.

WE WILL NOT interfere with handbilling or picketing at Capitola Mall by maintaining an unlawful application policy, by threatening to cause the arrest of, and by causing the arrest of individuals affiliated with Carpenters Local 505, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind the rules indicated above, and remove the language from the rules for noncommercial use of common areas, from the policies and guidelines for noncommercial use of common areas of Capitola Mall, and from any other document within our custody and control wherever such rules may be contained.

MACERICH PROPERTY MANAGEMENT CO.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 586; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 505,	:	
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<u>Respondent.</u>	:	
NATIONAL LABOR RELATIONS BOARD,	:	
Petitioner/Cross-Respondent,	:	
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 586; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 505,	:	
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Intervenors,	:	NLRB Nos.
v.		20-CA-29636-1
		20-CA-29918-1
MACERICH MANAGEMENT COMPANY; MACERICH PROPERTY MANAGEMENT COMPANY,	:	
<u>Respondents/Cross-Petitioners.</u>	:	

CERTIFICATE OF SERVICE

The undersigned certifies that one copy of the Board's proposed judgment in the above-captioned case has this day been served by overnight delivery service

upon the following counsel at the addresses listed below:

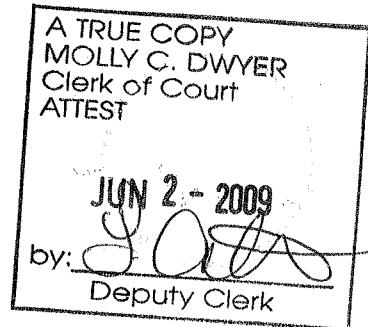
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Linda Dreeben *[Signature]*

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dated at Washington, D.C.
this 5th day of September, 2008





UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

RECEIVED
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

September 5, 2008

SEP 8 - 2008

FILED _____
DOCKETED _____ DATE _____ INITIA _____

Cathy A. Catterson, Esquire
Clerk, United States Court of
Appeals for the Ninth Circuit
PO Box 193939
San Francisco, CA 94119-3939

Re: 9th Cir. Nos. 05-75295,
05-76217 and 05-77116

Dear Ms. Catterson:

On August 25, 2008, the Court issued its decision in the above case, granting the Unions' petition, granting in part the Board's petition, and denying Macerich's petition.

Rule 19 of the Federal Rules of Appellate Procedure provides that when a court files a judgment enforcing an agency's order in part, the agency shall within 14 days thereafter serve upon the respondent and file with the clerk a proposed judgment conforming to the opinion. Pursuant to that rule and the Court's Order of August 25, 2008, I am enclosing the original and five copies of the Board's proposed judgment in the above-entitled matter.

After entry of the judgment by the Court, we would appreciate your returning one certified copy to this office, and sending another certified copy to the Regional Director whose name and address are listed below. An additional copy has been provided for that purpose.

Very truly yours,

Linda Dreeben
Deputy Associate General Counsel
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cc & documents to:

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